

ORIGINAL

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Alan M. Berkun, Petitioner  
vs.  
DUKE TERRELL-WARDEN, Respondent

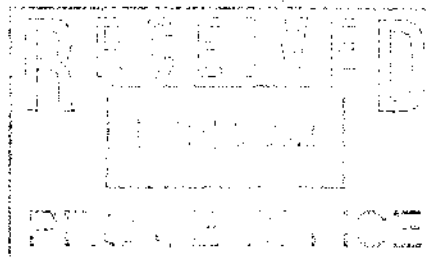
NO. **CV 12-000706**

PETITION FOR WRIT  
OF HABEAS CORPUS

**GLEESON, J.**

PETITION FOR HABEAS CORPUS

1. The petitioner is now in the custody of Duke Terrell, Warden of the Metropolitan Detention Center, Federal Correction facility, under sentence for conviction of 18 USC 1956 h rendered by the United States District Court for the Eastern District.
2. Since petitioner's confinement began at the MDC Federal Correction facility, petitioner has been deprived of his constitutional rights in connection with Administrative Case number 642829-F1, in which petitioner was unconstitutionally barred from ordering a jigsaw puzzle via the mail from Amazon.com to the MDC facility.
3. Petitioner's constitutional rights were denied in connection with Administrative case number 642829 F-1 and the BOP's adjudication, in that Petitioner's First Amendment rights are being violated. The prison officials actions denying petitioner the right to order a jigsaw puzzle are not "reasonably related to legitimate penological interests" and violate the Supreme Court decision in Turner v. Safely, 482 US 78, 107 S.Ct. 2254, 96L.Ed. 2d 64 (1987). Petitioner will also submit within 30 days a Memorandum of Law as part of this filing in support of his motion which examines the Supreme Court's four prong test and application to the instant action.
4. Petitioner filed his BP-8 on 5-18-2011 and it was denied on 6-1-2011. (See Exhibit One as attached). On 6-4-2011 Petitioner filed his BP-9 to the Warden (See Exhibit Two, as attached). On 6-23-2011 the request was denied (See Exhibit Three). Petitioner filed his BP-10 on 6-28-2011 and on 8-4-2011 his request was again denied. (See Exhibit Four). On 8-22-11 Petitioner filed his BP-11 and included proof of a second request to the facility for a puzzle (the basis of the denial in the BP-10), (See Exhibit Five). More than 120 days have passed with no response from Washington D.C. ; which date is well beyond the 60 day response time the BOP is required to adjudicate any Form BP-11.
5. This Court has jurisdiction pursuant to 28 U.S.C. § 2241. Petitioner has exhausted all appeals available to him under the BOP regulations and has no remedy other than this application for a writ of habeas corpus to correct the illegal and unconstitutional additional burdens added to his confinement.



Prayer

For all the reasons stated, petitioner prays that:

A. This Court issue a writ of habeas corpus directed to Duke Terrell, respondent, commanding him to produce the body of the petitioner, Alan M. Berkun before this Court at a time and place to be specified in the writ;

B. This Court conduct a hearing on the deprivation of the petitioner's constitutional rights set out in this petition, and, following the hearing;

C. This Court rule in favor of Petitioner and order the BOP to allow Petitioner's family to order from Amazon.com a jigsaw puzzle for the benefit of petitioner's personal enjoyment and insure its delivery to him at his place of incarceration.

Dated: 2-7-12

Signed By: A. M. Berkun - Pro Se

Name: Alan M. Berkun  
Inmate Number 58618-053  
MDC Brooklyn  
PO Box 329002  
Brooklyn, NY 11232-9002  
Unit H-52

# **EXHIBIT 1**

BRO-1330.13B  
ATTACHMENT 1  
PAGE 1

INMATE REQUEST FOR INFORMAL RESOLUTION

NAME ALAN BERKUN REG. NO. 58618-053  
UNIT H-52

Specific Issue Needing Resolution Approval of BP-A0331 "Authorization to receive package" for incoming puzzle from Amazon.com

Explain, in detail the issue: IN April I sent a copout to Ms. TURNER, then I spoke to A.W. at Mainline, then sent 2nd copout to Ms. Easterling requesting written approval to receive a jigsaw puzzle in mail. The Program Statement does not prohibit this item and other facilities allow it. I have waited more than 5 weeks with NO answer at all. I am entitled to a response and a written disapproval, if that be the case

INMATE SIGNATURE A. M. Berkun DATE 5-18-2011

TO BE COMPLETED BY COUNSELOR

Date Received: 5/21/11

Action Taken: Sent email to Ms Easterling and Ms. Turner requesting a response. As per PSS800.16, sec 3.13 pg 24 & 25, the puzzle is not educational or legal therefore, it is not authorized. This response was provided by R&D on 6-1-11.

COUNSELOR SIGNATURE [Signature] DATE 5/31/11

Footnotes

- \* copout #1 - Turner dated 4/25
- copout #2 Turner dated 5/5
- A.W. - MAINLINE - 5/10
- EASTERLING copout 1 - 5/10

No Response to all these requests!

see footnotes

## **EXHIBIT 2**

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

From: BERKUN ALAN M. 58618-053 H-52 MDC Brooklyn  
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

## Part A- INMATE REQUEST

Approval by WARDEN to order a jigsaw puzzle from Amazon.com and receive it to Housing Unit.

Program Statement 5860.16 dated 4-5-11, sec 313 states "all incoming inmate property packages must be authorized in advance, "unless otherwise approved under another Bureau policy," [emphasis added]. Program Statement 5370.11, dated 6-25-08, sec 3(A) states: "Recreation programs will be provided to keep inmates constructively occupied and to reduce idleness. To further that directive inmates may obtain materials through (4) "other sources approved by the WARDEN". A puzzle does not present any safety or security issues and it will be delivered to the mailroom from the publisher, similar to a book or magazine. A puzzle presents no additional staffing scrutiny for the mailroom and enhances the 2005 directive! Other federal facilities allow them on a regular basis. I will donate the puzzle to MDC upon completion. I seek your direct written approval to receive a jigsaw puzzle; [see BP-8 denial by R+B], as attached -

6-4 2011

DATE

SIGNATURE OF REQUESTER

## Part B- RESPONSE

DATE

WARDEN OR REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: G42829-FI

CASE NUMBER: \_\_\_\_\_

## Part C- RECEIPT

Return to:

LAST NAME, FIRST, MIDDLE INITIAL

REG. NO.

UNIT

INSTITUTION

SUBJECT: \_\_\_\_\_

DATE

RECIPIENT'S SIGNATURE (STAFF MEMBER)



3. **PROGRAM OBJECTIVES.** The expected results of this program are:

a. Recreation programs will be provided to keep inmates constructively occupied and to reduce idleness.

b. The physical, emotional, and social well being of inmates will be enhanced.

c. Inmates will be encouraged and assisted to adopt healthy daily lifestyle traits through participation in physical fitness and health education programs.

d. The need for inmate medical treatment will be decreased.

progst

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[a. Obtaining Materials. An inmate engaged in art or hobbycraft activities may obtain materials through:

(1) The institution art program (if one exists); (2) The commissary sales unit;

Special purchase commissary orders, if the sales unit is unable to stock a sufficient amount of the needed materials; or

→ (4) Other sources approved by the Warden.



## **EXHIBIT 3**

Inmate Name: BERKIN, Alan  
Register Number: 58618-053  
Administrative Remedy No.: 642829-F1

This is in response to your Request for Administrative Remedy, received June 9, 2011, wherein you request approval to receive a jigsaw puzzle from Amazon.com. Specifically, you state puzzles do not present safety or security concerns and the puzzle would be delivered from the publisher to the mail room utilizing the same procedures as books and magazines. Additionally, you state you will donate the puzzle to the institution upon completion and other facilities allow them on a regular basis.

With reference to your request for administrative remedy be advised that in accordance with institutional rules and regulations jigsaw puzzles are not approved as inmate personal property at MDC Brooklyn. However, jigsaw puzzles are hobby craft items that can be provided by the Recreation Department at MDC Brooklyn upon request and approval.

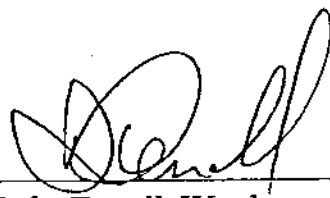
Specifically, Program Statement 5370.11, Recreation Programs, Inmate, indicates the art and hobby craft program enables inmates to make constructive use of their leisure hours and use their skills and creative abilities constructively. Moreover, Program Statement 5370.11 also indicates the use of hobby craft facilities is a privilege that may be granted or denied.

→ Accordingly, you may submit a Request to Staff to the Recreation Department requesting access to a jigsaw puzzle.

Based on the above requested information this is for informational purposes only.

If you are dissatisfied with this response, you may appeal to the Regional Director, Federal Bureau of Prisons, U.S. Custom House, 2<sup>nd</sup> and Chestnut Streets, Philadelphia, PA 19106, within 20 calendar days of the date of this response.

6/23/11  
Date

  
Duke Terrell, Warden

# **EXHIBIT 4**

Type or use ball-point pen. If attachments are needed, submit four copies. One copy of the completed BP-DIR-9 including any attachments must be submitted with this appeal.

From: PERKIN, GAN M 5111 133 11 52 MOD. E. K. Y. N.  
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

**Part A—REASON FOR APPEAL**[illegible]**Part B—RESPONSE**

DATE \_\_\_\_\_

REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the General Counsel. Your appeal must be received in the General Counsel's Office within 30 calendar days of the date of this response.

THIRD COPY: WARDEN'S ADMINISTRATIVE REMEDY FILE

CASE NUMBER: 1207

**Part C--RECEIPT**

CASE NUMBER: \_\_\_\_\_

Return to: \_\_\_\_\_ REG. NO. \_\_\_\_\_ UNIT \_\_\_\_\_ INSTITUTION \_\_\_\_\_  
LAST NAME, FIRST, MIDDLE INITIAL

SUBJECT: \_\_\_\_\_

ISSUED DATE


 Printed on recycled paper  
 Previous editions not usable

SIGNATURE, RECIPIENT OF REGIONAL APPEAL

BP-230(13)  
APRIL 1982

BERKUN, Alan

Reg. No. 58618-053

Appeal No. 642829-R1

Page One

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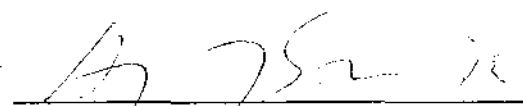
Part B - Response

You appeal the decision of the Warden at MDC Brooklyn and claim Recreation does not provide services to pretrial inmates and there are budgetary concerns preventing them from providing hobby craft classes. You specifically request to purchase personal jigsaw puzzles.

A review of your appeal reveals the Warden adequately responded to your complaint and you were denied permission to have a personal jigsaw puzzle. Any request to have a jigsaw puzzle was to be in writing to the Supervisor of Recreation. There is no documentation to show you submitted any such request. Accordingly, your appeal is denied.

If you are dissatisfied with this response, you may appeal to the General Counsel, Federal Bureau of Prisons. Your appeal must be received in the Administrative Remedy Section, Office of General Counsel, Federal Bureau of Prisons, 320 First Street, N.W., Washington, D.C. 20534, within 30 calendar days of the date of this response.

Date: August 4, 2011

  
J. L. NORWOOD  
Regional Director

## **EXHIBIT 5**

BP-A148.055  
SEP 98

## INMATE REQUEST TO STAFF CD/FRM

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) <i>E. Knight - Recreation DEPT Supervisor</i>	DATE: <i>6/28/2011</i>
FROM: <i>ALAN BERKUN</i>	REGISTER NO.: <i>58618-053</i>
WORK ASSIGNMENT: <i>WEST EDUCATION LIBRARY</i>	UNIT: <i>H-52</i>

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

*I am respectfully requesting that you order a jigsaw puzzle to the Recreation Department and allow me access to it. Please read the BP-9 response dated 6-23-11, as attached.*

*Thank you  
A. M. Ber*

(Do not write below this line)

## DISPOSITION:

*THE Recreation DEPT. will procure Jigsaw  
Puzzles for INMATE LEISURE TIME  
ACTIVITIES.*

Signature Staff Member <i>[Signature]</i>	Date <i>7/5/11</i>
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Record Copy - File; Copy Inmate  
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86  
and BP-S148.070 APR 94

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy each of the completed BP-229(13) and BP-230(13), including any attachments must be submitted with this appeal.

From: BERKUN ALAN M. 58618-053 H-52 MDC Brooklyn  
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

## Part A - REASON FOR APPEAL

DENIAL BY WARDEN FOR PERMISSION TO ORDER JIGSAW  
PUZZLES. I submitted my request to recreation Dept on 7-3-11 without any remedy.  
I seek amendment to the Program Statement which allows books and magazines. There  
is no additional "safety or security" burden to MDC mailroom in allowing a  
puzzle. The Warden and Region have failed to delineate any quantitative  
reasons on why I cannot order a puzzle directly. MDC recreation provides  
no activities to pre-trial at all and is placating me by telling me they  
will "procure a puzzle". If and when it ever arrives I may be gone from  
the facility. It is a pyrrhic victory to pass me back to the rec. dept!  
8-22-11  
DATE

SIGNATURE OF REQUESTER

## Part B - RESPONSE

DATE

GENERAL COUNSEL

ORIGINAL: RETURN TO INMATE

CASE NUMBER: \_\_\_\_\_

## Part C - RECEIPT

CASE NUMBER: \_\_\_\_\_

Return to: \_\_\_\_\_  
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: \_\_\_\_\_

DATE

SIGNATURE OF RECIPIENT OF CENTRAL OFFICE APPEAL







